

LABOUR DEPARTMENT

The 12th May, 1986

No. 9/9/86-6 Lab./3474.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of Presiding Officer, Industrial Tribunal, Faridabad in respect of the dispute between the Workmen and the management of M/s Joy B. Industries, Plot No. 162, Sector 24, Faridabad.

BEFORE SHRI R.N. BATRA, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL, HARYANA, FARIDABAD

Reference No. 380/1983 and 407/83

between

SHRI RAJINDER & SHRI PHEKOO WORKMEN AND THE MANAGEMENT OF M/S JOY B. INDUSTRIES, PLOT NO. 162, SECTOR 24, FARIDABAD.

Present :—

Shri C.L. Oberai, for the workmen.
Shri R.C. Sharma, for the Management.

AWARD

This award would dispose of two consolidated references bearing No. 380/1983 (Shri Rajinder *versus* Joy B. Industries, Plot No. 162, Sector 24, Faridabad) and No. 407/1983 (Shri Phekoo *versus* Joy B. Industries, Plot No. 162, Sector 24, Faridabad). The main proceedings have been held in reference No. 380 of 1983.

2. In exercise of the powers conferred by clause (d) of sub-section (1) of Section-10 of the Industrial Disputes Act, 1947, the Governor of Haryana referred the following dispute between Shri Rajinder and Shri Phekoo workmen and the Management of M/s Joy B. Industries, Plot No. 162, Sector 24, Faridabad, to this Tribunal for adjudication :—

Whether the termination of service of Shri Rajinder and Phekoo was justified and in order ? If not, to what relief are they entitled ?

3. Notices were issued to both the parties. The claimants in their demand notices which were treated as claim statements alleged that they worked for about two years with the respondent but their services were terminated on 13th August, 1982 illegally inasmuch as no seniority list was displayed nor any notice was sent to Government. It was also alleged that no amount was paid to the workers and their signatures were obtained forcibly on certain papers. It was also alleged that provisions of Section 25-F of the Industrial Disputes Act, 1947, were not complied with and as such the claimants were entitled to reinstatement with full back wages.

The management in its written statement dated 14th August, 1984 pleaded that there was general crisis in the industry due to which the Management had to effect retrenchment with effect from 13th August, 1982. It was further pleaded that Shri Rajinder claimant had received Rs. 978.20 paise after deduction while Shri Phekoo had received Rs. 1143.42 paise after deduction and that this amount included notice pay and compensation. It was further pleaded that form 'P' was sent to the Government and that seniority list was displayed.

4. The claimants in the rejoinder dated 5th September, 1984 reiterated the pleas taken in the claim statement.

5. On the pleadings of the parties, the following issue was framed :—

Whether the termination of service of Shri Rajinder and Shri Phekoo was justified and in order ?
If not, to what relief they are entitled to ? OPM

6. It may be mentioned that the Management has examined one witness and document Ex. M-1 to M-7 have been tendered into evidence. Both the claimants have appeared in the witness box. After going through the entire evidence and hearing the representatives of both the parties, my findings on the above issue is as under :—

Issue No. 1 :

7. The Management has examined MW-1 Shri Subhash Chand, Manager of the respondent factory who stated that their factory was doing the job of casting for tractor companies like Escorts, Eicher and Ford. He further stated that due to recession in the market since January, 1982, they had received less orders from the tractor factories. He further stated that in the first instance, the casual and temporary workers were terminated

and thereafter the regular employees were retrenched as per retrenchment list Ex. M-1, which was displayed on the notice Board. He further stated that the details of 55 regular workers were given in the list Ex. M-2. He also stated that Ex. M-3 was the retrenchment notice given to Shri Rajinder, who received the same. He further stated that Shri Phekoo claimant had also received the retrenchment notice Ex. M-4 and that the amount was paid to Shri Phekoo in his presence by the cashier,—*vide* receipt Ex. M-5 which was attested by Shri Ram Tarak and Jagdish Prashad. He further stated that Shri Rajinder claimant received dues,—*vide* receipt Ex. M-6 which was also attested by Shri Ram Tarak and Shri Jagdish Parshad. He stated that Shri Ram Tarak was the General Secretary of the Union during those days and that Ex. M-7 was the photostat copy of form P which was sent to the Government.

8. Shri Rajinder claimant (WW-1) stated that he had worked for more than one year in the respondent factory and that no notice or compensation was given to him. He further stated 56/57 workers were retrenched at that time, but the factory was running normally and that no list of retrenched employees was seen by him on the notice Board. He further stated that a number of casual workers had been employed by the respondent after retrenchment. Shri Phekoo (WW-2) was tendered for cross-examination.

9. A perusal of the above evidence would show that 55 workers, including the claimants, were retrenched by the Management as per list Ex. M-2. The names of the claimants appear at serial No. 37 and 38 of this list. In the retrenchment notices, Ex. M-3 and M-4 given to the claimants on 13th August, 1982, it is mentioned that the retrenchment was being effected due to less orders, but the claimants were asked to collect their dues including one month notice pay and compensation immediately from the accounts department. Ex. M-5 and Ex. M-6 are the full and final accounts settlement receipts of the claimants, in which it is recited that Shri Rajinder claimant received Rs 978.20 Paise while Shri Phekoo received Rs. 1143.42 paise including notice pay and compensation. Ex. M-1 is the seniority list and the names of the claimants appear at serial Nos. 83 and 84 therein. Ex. M-7 is the copy of form P dated 20th August, 1982 sent to the Government with copies to various labour offices. The reason's have thus been given in the retrenchment notice and documents Ex. M-5 and M-6 go to show that one month's notice pay and retrenchment compensation were paid to the claimants. The oral testimony led by the claimants to the effect that no notice pay or compensation was paid to them cannot be accepted because in the retrenchment notices Ex. M-3 and M-4, the claimants were directed to collect their dues immediately, including the notice pay and compensation. Shri Rajinder claimant appeared in cross-examination and stated that the document Ex. M-3 bore his signatures. These notices were issued on 13th August, 1982 on which date the retrenchment was effected. Consequently, there was a sufficient compliance of Section 25-F of the Industrial Disputes Act, 1947, by mentioning in these notices that the claimants should receive the amount immediately including notice pay and compensation. Moreover the full and final settlement accounts, Ex. M-5 and M-6, have been proved by the Management. These documents bear the attestation of Shri Ram Tarak, the then General Secretary of the Union and Shri Jagdish Parshad as stated by MW-1 Shri Subhash Chand, Manager. The claimants have not produced Shri Ram Tarak, General Secretary and Shri Jagdish Parshad to show that they did not attest the documents. Consequently, the plea taken by the claimants that they did not receive the notice pay or compensation cannot be accepted.

10. It was argued by the representative that seniority list was not displayed. MW-1 Shri Subhash Chand Manager stated that Seniority list Ex. M-1 was displayed on the notice board. The seniority list was prepared on 5th August, 1982 as mentioned in the document Ex. M-1 and their retrenchment was effected on 13th August, 1982. Consequently, this seniority list was prepared a week prior to the retrenchment, the oral testimony of the claimants that the seniority list was not displayed thus cannot be accepted.

11. It was then argued that form P was not sent to the Government. MW-1 Shri Subhash Chand Manager had stated that form Ex. M-7 was sent to the claimant. This document shows that it was addressed to the Government and its copies were sent to 5 concerned labour offices on 20th August, 1982. There is no evidence in rebuttal to show that this letter was not received by the Government and in 5 other offices. The argument fails.

12. It was further argued that there was no justification to effect retrenchment. The reasons for retrenchment have been given in the retrenchment notices Ex. M-3 and M-4, besides the claimants, 53 more workers were retrenched due to reduction in the work. The reasons for retrenchment have thus been given in the retrenchment notices.

13. In view of the above discussion, it is held that the termination of services of both the claimants was justified and in order and that the provisions of Section 25-F of the Industrial Disputes Act, 1947, having been complied with the claimants are not entitled to any relief. The award is passed accordingly.

Dated, 3rd April, 1986.

R. N. BATRA,

Presiding Officer,
Industrial Tribunal, Haryana
Faridabad.

Endst. No. 262, dated the 4th April, 1986.

Forwarded (four copies), to the Commissioner and Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh, as required under Section 15 of the Industrial Disputes Act, 1947.

R.N. BATRA,
Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

The 21st May, 1986

No. 9/7/86-6 Lab./3828.—In pursuance of the Provisions of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of presiding Officer, Labour Court, Rohtak in respect of the dispute between the workman and the management of M/s Janta Maternity Hospital, Sirsa.

BEFORE SHRI B. P. JINDAL, PRESIDING OFFICER, LABOUR COURT, ROHTAK

Reference No. 273 of 1984

between

ASHA DEVI, WORKMAN AND THE MANAGEMENT OF M/S JANTA MATERNITY HOSPITAL
SIRSA.

Present :—

Shri V.K. Bansal, A.R. for the workman.
Shri S.S. Goyal, A.R. for the management.

AWARD

1. In exercise of the powers conferred by clause (c) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947, the Governor of Haryana referred the following dispute, between the workman Asha Devi and the management of M/s Janta Maternity Hospital, Sirsa, to this Court, for adjudication,—vide Haryana Government Gazette Notification No. 42252-56, dated 27th November, 1984 :—

Whether the termination of services of Asha Devi is justified and in order ? If not, to what relief is she entitled ?

2. After receipt of the order of reference, notices were issued to the parties. The parties appeared. The claim of the petitioners is that she was appointed as a Clerk with the respondent on 2nd January, 1980 and there was stipulation in the letter of appointment that the petitioner shall be deemed to have been confirmed after one year of service and that on 5th October, 1983 the petitioner and some other employees served one months' notice upon the respondent with a letter of resignation which was to be effective w.e.f. 4th December, 1983 but the petitioner and others withdraw the resignation letter on 12th October, 1983. The management accepted withdrawal of other employees but not of the petitioner whose resignation was accepted on 21st October, 1983 and that the said order is illegal and arbitrary and was passed with a *malafide* intention and as such, she was prayed for reinstatement with continuity of service and full back wages.

3. In the reply filled by the respondent, it is admitted that the petitioner employed as alleged but it is denied that service record was blemishless. It is asserted that the petitioner tendered her resignation on 5th October, 1983, which was accepted on 21st October, 1983 and she was relieved from her duties on that very date after payment of her dues, which she accepted without protest and as such, it is alleged that the management never terminated the services of the petitioner, because she resigned her job of her own. *Inter alia*, it is alleged that after the resignation of the petitioner another employee Asha Devi was employed, who is still in service. It is further alleged that the respondent is not an "industry" as defined in section 2(j) of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act) and so also the reference is not maintainable.

4. On the pleadings of the parties the following issues were settled for decision by me on 9th April, 1985 :—

- (1) Whether the termination of services of Asha Devi is justified and in order ? If not, to what relief is She entitled ?
- (2) Whether the reference is bad in law because the workman voluntarily resigned from her service ?

5. The petitioner examined WW-1 Dr. M.M. Talwar and herself appeared as WW-2. The respondent examined MW-1 Shri M. L. Jain, Manager-cum-Administrator of the respondent trust and MW-2 Shri Ram Avtar, Assistant Administrator of the respondent.

6. Heard.

Issue No. 2 :

7. The terms of reference are confined to the justifiability or otherwise of the alleged order of termination. The case of the respondent is that service of the petitioner were never terminated as alleged and that she resigned from her job of her own on 5th October, 1983, which was accepted on 21st October, 1983 and she was paid her salary for the notice period up to 5th November, 1983. So, the plea of the learned Authorised Representative of the respondent was that the controversy now unfolded before the Court is beyond the terms of reference and that this Court cannot travel beyond the terms of reference in view of the law laid down in 1984 ILLN 297 Sita Ram Vishnu Shinodhkar and Administrator Government, of Goa and others, 1985 Lab. I.C. 480 Rajasthan State Road Transport Corporation and others *versus* The Judge Industrial Tribunal Rajasthan Jaipur and others, 1981 Lab. I.C. 1110 Firestone Tyer & Rubber Co. of India (P) Ltd. *versus* The workman employed represented by Firestone Tyre Employees Union.

8. On the other hand, the learned Authorised Representative of the petitioner contended that the petitioner though, she resigned on 5th October, 1983, withdrew the same on 12th October, 1983 and as such, alleged acceptance of the same by the respondent on 21st October, 1983 was illegal and arbitrary and in support of his contention he cited 1978 (1) SLR 521 Union of India *versus* Shri Gopal Chand Mishra and others. In this authority their Lordships of the Supreme Court of India held that prospective resignation can be withdrawn before the arrival of the indicated future date and the same shall not be complete till the said date is reached. But in the present case, controversy is entirely of a different nature. Firstly, as already observed the controversy which has now cropped before the Court is absolutely alien or divorced from the terms of reference and secondly the alleged withdrawal letter dated 12th October, 1983 which is main plank of the petitioner is a forged documents on the face of it. She has sought to prove the alleged letter withdrawing her resignation, photo copy of which is Ex. W-1, from the statement of Dr. M.M. Talwar WW-1 and from her own statement when she appeared as WW-2 the said document is a suspicious one, because the same is a photo copy of the alleged letter of withdrawal submitted by her before Dr. M.M. Talwar on 12th October, 1983, the date on which, regular Administrator of the respondent trust was on leave and Dr. Talwar allegedly signed the same. If at all, this letter Ex. W-1 was put up before Dr. Talwar on 12th October, 1983 by the petitioner, Dr. Talwar would have forwarded the same to the respondent for some action. He simply signed the same. Let us assume for the sake of arguments that the same was submitted before Dr. Talwar on 12th October, 1983 and he signed the same but the question would be as to how the petitioner procured a photo copy of the same after the same had been signed by Dr. Talwar. The learned Authorised Representative of the petitioner tried to wriggle out of this unhappy position by arguing that she managed the photo copy in connivance with the staff of the respondent hospital. If the petitioner could do so, she could also rope in Dr. Talwar in making a wrong statement that letter Ex. W-1 was submitted before him by the petitioner on 12th October, 1983. The respondent has examined its Manager-cum-Administrator MW-1 Shri M.L. Jain. He has denied that the petitioner ever withdrew her resignation through any letter on 12th October, 1983. Another factor which goes against the petitioner is that she accepted her emoluments of the entire notice period up to 5th November, 1983,—vide payment voucher Ex. M-1, upon which, She had a self interest to deny her signatures though, She gave herself out in denying her signatures in a hesitant manner, and a note regarding her demeanour as given by the Court while recording her statement. Under these circumstances, there is no difficulty in holding that the alleged letter of withdrawal Ex. M-1 is a forged document, which the petitioner manoeuvred in connivance with Dr. Talwar to make out a case of withdrawal of her resignation and take all benefits under the said Act. So, in a nut shell the controversy before the Court is absolutely alien to the terms of reference and secondly the petitioner never validly, withdrew her resignation, which She submitted on 5th October, 1983 and 12th October 1983 as is sought to be proved by her, in which She miserably failed. So, this issue is answered against the petitioner.

Issue No. 1:

9. As the petitioner resigned of her job of her own and her withdrawal letter on 12th October, 1983 has been held to be a forged document, there was no termination of services of the petitioner as alleged and so, there is no question of any such order being unjustified.

10. In the light of my foregoing discussion, the claim of the petitioner must fail. She is not entitled to any relief. The reference is answered and returned accordingly with no order as to cost.

Dated : 16th April, 1986

B. P. JINDAL,

Presiding Officer
Labour Court, Rohtak,
Camp Court, Sirsa.

Endst. No. 273-84/586, dated 21st April, 1986

Forwarded (four copies) to the Secretary to Government, Haryana, Labour & Employment Departments, Chandigarh as required under section 15 of the Industrial Disputes Act, 1947.

B. P. JINDAL,
Presiding Officer,
Labour Court, Rohtak,
Camp Court, Sirsa.

No. 9/7/86-6 Lab/3830.—In pursuance of the provisions of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of Presiding Officer, Labour Court, Rohtak, in respect of the dispute between the workman and the management of Haryana Roadways, Hissar.

BEFORE SHRI B.P. JINDAL, PRESIDING OFFICER, LABOUR COURT, ROHTAK

Reference No. 130 of 81

between

SHRI VIKRAM SINGH, WORKMAN AND THE MANAGEMENT OF HARYANA
ROADWAYS, HISSAR

Present :—

Shri S.S. Gupta, A.R. for the workman.

Shri Jagbir Singh, A.R. for the management.

AWARD

1. In exercise of the powers conferred by clause (c) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947, the Governor of Haryana, referred the following dispute, between the workman Shri Vikram Singh and the management of Haryana Roadways, Hissar, to this Court, for adjudication,—*vide* Haryana Government Gazette Notification No. ID/HSR/11/89/53562, dated 30th October, 1981 :—

Whether the termination of service of Shri Vikram Singh was justified and in order ? If not, to what relief is he entitled ?

2. After receipt of the order of reference, notices were issued to the parties. The parties appeared. The case of the petitioner is that he was employed with the respondent as a Conductor since the year 1976 and all through his work and conduct was satisfactory and the management,—*vide* its order, dated 11th August, 1978 terminated his services unlawfully, after holding a farce of an enquiry, in which, he was not given complete opportunity of participation and further-more the Enquiry Officer was biased in favour of the management and that the punishment awarded to him is glaringly disproportionate to his alleged proved misconduct. On these grounds, he has prayed that he be reinstated with benefits of all previous service and full back wages.

3. In the reply filed by the respondent, preliminary objections taken are that the present reference is not maintainable, because services of the petitioner were terminated after holding a domestic enquiry, which was fair and proper and that the petitioner was given full opportunity of participation. It is denied that the work and conduct of the petitioner had been satisfactory. On the other hand, it is alleged that there were many other complaints against the petitioner and so, the order of termination was legal and justified.

4. On the pleadings of the parties, the following issues were settled for decision by my learned predecessor,—*vide* order, dated 16th July, 1982 :—

(1) Whether the enquiry conducted by the management is fair and proper ?

(2) Whether the termination of services of Shri Vikram Singh is justified and in order ? If not, to what relief is he entitled ?

5. The management examined MW-1 Shri Ramesh Kumar, Clerk, MW-2 Shri Rajinder Singh, Chief Inspector, MW-3 Shri V.P. Tirkha, retired Superintendent and MW-4 Shri Kartar Singh, Inspector. The workman appeared as his own witness as WW-1.

6. Learned Authorised Representatives of the parties heard.

Issue No. 1.—

7. The learned Authorised Representative of the petitioner forcefully contended that the enquiry in this case was not fair and proper, because the same was not held within four parameters of the principles of natural justice as the Enquiry Officer was biased against the workman and this biased attitude of the Enquiry Officer is exposed from the enquiry proceedings recorded by him. A pointed reference was made to the statement of Shri Kartar Singh, Inspector, in which, the Enquiry Officer did not afford any opportunity to the workman to cross-examine the Inspector. A combined charge-sheet regarding two acts of embezzlement was issued to the workman and a single enquiry was ordered into the same, but even then, the Enquiry Officer has chosen to record the statement of the workman twice. It is the Enquiry Officer, who conducted the examination examining the witnesses of the management, because no presenting Officer on behalf of the respondent was present. It is the Enquiry Officer himself, who asked questions from the petitioner. The plea of the workman was that two of the passengers had not purchased tickets of their own and they made a statement before the Inspector Shri Rajinder Singh that they have paid the fare to the Conductor on the pain of being penalised eleven times the fare. This fact was even admitted by Shri Rajinder Singh, Inspector when a question was put to him by the petitioner in cross-examination. If, that was the position, there was no reason for the Enquiry Officer to hold that it is the petitioner, who did not issue tickets to the passengers with any ulterior motive. It seems that throughout the enquiry proceedings the Enquiry Officer himself was acting as a Judge as well as Prosecutor. Furthermore, the Enquiry Officer has given a resume of the statement recorded by him during the enquiry proceedings and thereafter without appraising the same came to the conclusion that both the charges against the petitioner stand established. Under these circumstances, there is no difficulty in holding that the enquiry in this case is not reasoned one and that the Enquiry officer flouted the principles of natural justice in conducting the enquiry proceedings, because all through he seems to have been biased against the petitioner. Under these circumstances, there is no difficulty in holding that the enquiry in this case was not fair and proper and as such, this issue goes against the management.

8. Since no right to adduce evidence on merits was reserved by the management, in case, issue regarding domestic enquiry is answered against it and further more the management has examined both the Inspectors of the checking staff, I have also gone through the statement and have reached my independent conclusion that the enquiry in this case was not fair and proper, because there was no appraisal of the evidence adduced during the enquiry proceedings by the Enquiry Officer and as such, there is no question of affording any opportunity to the management to adduce any evidence on merits.

Issue No. 2.—

9. I have already that the enquiry in this case is not fair and proper and resultant order of termination based upon the findings of the Enquiry Officer cannot be sustained. There is nothing on record that the past service record of the workman was shady. Under these circumstances, the workman is ordered to be reinstated with continuity of service and full back wages. Full back wages have been awarded, because the demand notice was raised by the workman after about one year of his termination from service. He was terminated on 11th August, 1976 and the demand notice received along with the order of reference is dated 26th November, 1979. Courts have not viewed unkindly delay for less than three years. So, the workman is awarded full back wages. The reference is answered and returned accordingly with no order as to cost.

Dated the 11th April, 1986.

B. P. JINDAL,

Presiding Officer,
Labour Court, Rohtak,
Camp Court, Sonapat.

Endst No, 180-81/588, dated 21st April, 1986

Forwarded (four copies) to the Secretary to Government, Haryana, Labour & Employment Departments, Chandigarh as required under section 15 of the Industrial Disputes Act, 1947.

B. P. JINDAL,

Presiding Officer,
Labour Court, Rohtak,
Camp Court, Sonapat.